THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 16451 OF 2005

FRIDAY, 3RD NOVEMBER, 2005

Between:

V.Satyanarayana Charyulu, S/o Narasimha Charyulu,

Aged about 36 years, Occ: Paricharaka,

Sri Lakshminarasimha Swami Devasthanam,

Yadagiri Gutta, Nalgonda District & Others.

…Petitioners

And :

The Government of Andhra Pradesh rep. by its

Principal Secretary, Endowment Department,

Secretariat, Hyderabad & Others.

… Respondents

::ORAL ORDER ::

The four petitioners describing their occupation as Paricharakas of Sri Lakshminarasimha Swami Vari Devasthanam (R3), have filed the writ petition for a:

> " Writ of Mandamus declaring the action of the Respondents in not implementing the proceedings of the 2nd Respondent herein in D.Dis.No. A1/33664/2004, dt. 27/4/2005, utilizing the services of the Petitioners herein as Paricharakas as arbitrary, illegal, unjust, discriminatory and also declare G.O.Rt. N. 1123, dt. 6/6/2005 has no application to the cases of the Petitioners herein and issue consequential direction to the Respondents to implement the proceedings of the 2nd Respondent in D.Dis. Nl. A1/33664/2004, dt 27/4/2005 without reference to G.O.Rt.No. 1123, dt 6/6/2005 and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

According to the petitioners, they worked on daily wage basis as Paricharakas, since February 2001. The Pradhana-Paricharakas of the R-3 temple, it is pleaded, in their letter dt 4.4.2002 requested the Executive Officer of the R-3 Temple to increase the strength of the Archakas to 25 as was earlier the position. By the letter dt 15.4.2002 the Executive Officer sent up proposals to the 2nd respondent – the Commissioner of Endowments for increase of the cadre strength of Archakas to 25 to meet the current exigencies. The Paricharakas also made a representation to the Commissioner on 31.12.2003 for increase of the strength of Archakas. In response, the 2nd respondent Commissioner by proceedings dt 21.1.2004 directed the Executive Officer to place the matter before the Committee constituted by the 2nd respondent's Office and the committee was directed to furnish its report to the 2nd respondent. The Executive Officer in proceedings dt 17.4.2004 sent proposals to the 2nd respondent for appointment of Paricharakas on contract basis.

Eventually by proceedings dt 27.4.2005 the 2nd respondent granted permission to the Executive Officer to utilize the services of the petitioners as Paricharakas on consolidated pay of Rs.3,500/- pm, in the available four vacant Paricharaka posts "subject to verification of their qualifications and other requirements" and also directed the Executive Officer to take further action in accordance with his order dt 27.4.2005. The Executive Officer however did not yet issue any orders appointing the petitioners as Paricharakas on consolidated basis as directed in the Order of the Commissioner dt 27.4.2005. Perhaps he would have in due course, but other events

intervened.

A number of decisions taken and orders passed by the then Commissioner of Endowments appear to have caused a ripple in the otherwise sanguine administration with regard to the administration of the Endowment department under the control of the Commissioner. Responding to a perceived public outrage at some of the decisions, the State Government issued a series of orders - some canceling or rescinding some of the orders of the Commissioner and others keeping some of the orders in abeyance. In G.O. Rt. No. 1123, Revenue (Endowments I) Department, dt 6.6.2005 specified orders of the Commissioner of Endowments (as detailed in the annexure to the said G.O.), were kept in abeyance.

The order of the 2nd respondent dt 27.4.2005 is one of such order of the 2nd respondent, kept in abeyance by G.O. 1123. As a consequence of the order in G.O.Rt. No. 1123, the petitioners' expectation of functioning as Paricharakas on a consolidated salary, got eclipsed. They are thus before this court seeking invalidation of G.O. 1123 and seek a consequential direction to the official respondents to implement the 2nd respondent's order dt 27.4.2005 and without reference to Government orders in G.O.Rt. No.1123.

Respondents 4 to 13 were impleaded as party-respondents to the writ petition by the order of this court dt 20.9.2005 in an application made by them in this behalf. These respondents are also NMRs working in the R-3 Devasthanam who claim to be seniors to the petitioners, as NMRs. They claim an equal, if not a preferential, right to be considered for appointment as Paricharakas as and when recruitment to the vacant posts of Paricharakas is taken up. They are aggrieved that the petitioners have been appointed on a consolidated basis as Paricharakas without considering their cases also, if not preferentially. In substance respondents 4 to 13 were content with the shared misfortune of being NMRs but are aggrieved by the unmerited windfall in favour of the petitioners.

Sri S.Ramachandra Rao, learned Senior Counsel appearing for the petitioners would contend that having regard to the locus of dispute area defined in the writ petition, this court ought not to consider the question whether the appointment of the petitioners as Paricharakas was in accordance with the statutory regime obtaining under the Andhra Pradesh Charitable and Hindu Religious Institutions & endowments Act, 1987 (for short 'the Act'). The substance of the contention on

behalf of the petitioners is that regardless of how the petitioners came to be appointed or their appointments approved by the Commissioner, the very factum of issuance of proceedings by the Commissioner legitimizes their right or expectation to continuance as Paricharakas though on a consolidated basis and such expectation they cannot be deprived of without following the due process of law, in particular without affording them an opportunity to show case why they be not deprived of such expectation. Since G.O.Rt. No.1123 proceeds to eclipse, if not efface, such legitimate expectation of the petitioners, the Government Order beseeches invalidation for patent violation of the *Audi Alteram Partem* rule, is the substance of the contention.

The Learned Government Pleader for Endowments would submit that the only decision taken in G.O.Rt. No. 1123 is to keep the order of the Commissioner dt 27.4.2005 in abeyance and that no final decision has yet been taken; the State will now proceed to issue notices to all the effected persons, that after such opportunity is afforded (to the effected persons including the petitioners) and considering all the objections/representations, an appropriate final decision would be taken by the Government. The State asserts that the order in G.O.Rt.No. 1123 is patently within the jurisdiction of the Government, is interim in nature and therefore calls for no interference. The State also contend that no principle of natural justice in particular *Audi Alteram Partem* principle, is applicable at this stage of Government decision making and that the order in G.O.Rt. 1123 ought not to be invalidated on this ground.

Sri Ramachandra Rao, learned Senior Counsel relies on two decisions of this court – one dated 9.9.2005 (of a learned Single Judge) in W.P. No. 19107 of 2005 and Batch and another in W.P. No. 18846 of 2005 (also of a learned Single Judge) dt. 29.9.2005. In the first of these decisions the validity of proceedings issued by the Executive Officers of two Devasthanams canceling the contractual appointment orders issued in favour of the petitioners therein, pursuant to the Government order in G.O.Ms. No. 1422 dated 25.7.2005, were assailed *inter alia* on the ground that these orders were issued without notice or opportunity to the effected petitioners. It requires to be noticed that the order of the Government in G.O.Ms.No. 1422 was issued pursuant to the orders in G.O.Rt.No. 1123 dated 6.6.2005. In G.O.Rt.No. 1123 (as already noticed) specified orders of the Commissioner were kept in abeyance while in G.O. 1422 the Government have passed final orders canceling all appointments made on contractual basis. Consequent on the G.O.Ms. No.1422, all

the Executive Officers had also issued consequential proceedings cancelling the contractual appointments. There was thus a final determination of the services of the petitioners therein, taken without following the principles of natural justice.

In the second case (W.P.No. 18846/05) also the validity of G.O.Ms. No. 1422 dt 25.7.2005 fell for the consideration of this court. A learned single Judge following the decision in the earlier case invalidated the order in so far as the petitioners therein were concerned on the ground of violation of principles of natural justice.

In the case on hand however there is no order finally determining the validity of the petitioners' appointments as Paricharakas or the validity of proceedings of the Commissioner dated 27.4.2005 (according approval to the Executive Officer of the R-3 for appointment of the petitioners as Paricharakas on consolidated pay of Rs.3,500/- pm). On a true and fair construction, the impugned order is an order interdicting for the nonce, the operation of the Commissioner's order dt 27.4.2005, without however a final pronouncement on its validity.

To a query, the learned Government Pleader submitted that no show cause notice has yet been issued to the writ petitioners after the impugned order of the Government as this writ petition is pending. No principle or authority is cited for such hibernation by the State Government with regard to taking further action pursuant to the interim decision recorded in G.O.Rt No. 1123. There is no order of this court, in this writ petition or any order in any other writ petition either, which interdicts the power, or authority of the State to proceed further. Pendency of a writ petition in a court is occasionally projected as an excuse for Executive lassitude even in critical areas of administration. Such abdication of executive responsibility requires to be strongly deprecated and this court does so. Having kept the Commissioner's orders dt 27.4.2005 in abeyance, the State Government is obligated to proceed further in the matter; issue notices to the petitioners and other effected parties; solicit their objections; consider the objections if any and then proceed to a final decision. This, the Government failed to do. It is rest content with passing an order keeping the Commissioner's order in abeyance and thereafter doing nothing.

Coming back to the substantive challenge by the petitioners to the validity of G.O.Rt. No. 1123, this court holds that the contentions urged on behalf of the petitioners to the validity of G.O.Rt. No. 1123 do not merit acceptance. The State Government has

a plenitude of power u/Sec. 93 of the Act, either *suo motu* or on a complaint to call for and examine the record of the Commissioner or any other authority under the Act and to determine the correctness, legality or appropriateness of such decision and whether such decision or order should be modified, annulled, reversed or remitted for reconsideration. The proviso to Sec. 93 (1) ordains the Government not to pass any order prejudicial to any party unless such party had an opportunity of making a representation. The requirement of hearing effected interests is thus not merely left to the general principles of natural justice but is a legislative mandate, *qua* the proviso to sub-sec.(1) of Sec.93. Sub-sec.(2) explicates the power of the Government while exercising jurisdiction or authority u/Sec.93 to stay the execution of any such decision or order pending the exercise of the powers u/sub-sec.(1). Sec.93(2) therefore clearly and explicitly grants the Government the power to make an interlocutory determination for the purpose of management of an exigent situation, pending regular determination in exercise of its supervisory powers u/Sec.93. Sub-sec.(2) of Sec.93 specifies the inherent and ancillary power of the Government to effectuate the substantive supervisory power conferred on it u/Sec. 93. While exercising the power under sub-sec.(2) of Sec.93, the Government is not required, either explicitly or by any compelling empirical implication, to afford effected parties an opportunity. This court is therefore unable to accept the petitioners' contention that G.O. Rt. No.1123 is invalid for the reason that it is not preceded by a notice or opportunity to the petitioners.

There is yet another reason that negates the petitioners' claim. It is the demonstrable as well as the admitted situation that R-3 Devasthanam is an category-6(a) Devastahanam and for making appointments to the posts of Paricharakas in such a temple, it is the Executive Officer who is the competent authority u/Sec.35 of the Act. The 2nd respondent is not the competent authority. The 2nd respondent's order dt 27.4.2005 merely enables the Executive Officer, by the accord of permission, to utilize the services of the petitioners as Paricharakas on the terms specified in the order dated 27.4.2005. The order dated 27.4.2005 is not thus a fertilized decision, which can on its own confer an employment status on the petitioners to hold the post of Paricharakas. The order of the 2nd respondent, to translate into an enforceable right (to hold the post of Paricharika) requires the passing of appointment orders by the Executive Officer concerned. The fact that the Executive Officer of the Devasthanam is administratively subordinate to the 2nd respondent, would not, in

law, eclipse the statutory power of the Executive Officer nor enhances the vitality of the Commissioner's proceedings. Permission to appoint ordered by the 2nd respondent, is not in law an order of appointment by the Executive Officer. Such an interpretation of the Commissioner's powers would be subversive of the division of power, authority and responsibility, under the distinct provisions of the Act and would also subvert the checks and balances provided under the Act, in allocating the power to different levels of endowment authorities. This contention of the petitioners does not therefore commend acceptance of this court. If there is no appointment order as such, appointing the petitioners as Paricharakas there is no expectation, legitimate or otherwise, which has been eclipsed or interfered with by G.O.Rt. No. 1123.

On the analysis above this court discerns no infirmity in the order of the 1st respondent dated 6.6.2005 in G.O.Rt. No. 1123, Revenue (Endowments. I) Department.

The order of the 2nd respondent igniting the expectation if not a legitimate expectation of the petitioners is merely kept in abeyance by the State Government in exercise of its statutory power u/Sec. 93 of the Act. It is but appropriate that the State Government should complete the half finished task.

The State Government is accordingly directed to forthwith initiate steps to issue notices to the effected persons including the petitioners, setting out clearly the reasons why it considers that the order of the 2nd respondent dated 27.4.2005 cannot be permitted to operationalise into orders of the petitioners' appointment as Paricharakas. The show cause notices shall communicate clearly the time frame within with the petitioners should respond to such proposals. If and on the receipt of the objections of the petitioners within the time stipulated in the show cause notices which shall be reasonable, the 1st respondent shall, without demur or default consider such objections, recording reasons for its determination, record its decision in the mater and communicate such decision to the petitioners. The entire exercise above shall be concluded by the 1st respondent, within a period not exceeding six weeks from today.

The writ petition is disposed of as above. The interim order dated 28.7.2005 granted in WPMP No. 20900 of 2005 shall stand dissolved.

Registry is directed to furnish copy of this order within five days.

Dt: 03.11.2005 ----------

Pvsn Justice G. Raghuram